



STATE OF INDIANA

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March 9, 2012

Mr. Thomas Gillard
6908 S. Old U.S. Highway 41
PO Box 1111
Carlisle, Indiana 47838

Re: Formal Complaint 12-FC-64; Alleged Violation of the Access to Public Records Act by the Indiana Department of Corrections

Dear Mr. Gillard:

This advisory opinion is in response to your formal complaint alleging the Indiana Department of Corrections ("DOC") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Rich Larsen, Public Information Officer, responded on behalf of the DOC. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that you submitted a written request to the DOC for a copy of an incident report involving yourself and Officer Getchel. The DOC denied your request on February 22, 2012 citing 210 IAC 1-6-2(3)(E), which provides that all internal investigative information is confidential and not subject to disclosure.

In response to your formal complaint, Mr. Larsen advised that your request was denied pursuant to 201 IAC 1-6-2(3)(E) as all internal investigative information is considered confidential and not subject to disclosure.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See* I.C. § 5-14-3-1. DOC is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy DOC's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven (7) days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. Here, the DOC responded to your written request within one day of its receipt, thus complying with the requirements of section 9 of the APRA.

As to the substance of the denial, Mr. Larsen denied your request based on 210 I.A.C. 1-6-2(E), which classifies as confidential information internal investigation information. The APRA provides that a public agency may not disclose records “declared confidential by rule adopted by a public agency under specific authority to classify public records as confidential granted to the public agency by statute.” I.C. § 5-14-3-4(a)(2). Under I.C. § 11-8-5-2(a), DOC may classify as confidential information maintained on a person who has been committed to the DOC or who has received correctional services from the DOC. Pursuant to this authority, the DOC has classified several categories of documents as “confidential information,” including information relating to offender diagnostic/classification reports; information that, if disclosed, might result in physical harm to that person or other persons; and internal investigation information. 210 I.A.C. 1-6-2(3)(A), (C), (E). Therefore, if the report you requested constitutes an internal investigation report, the DOC did not violate the APRA by denying your request. *See also Opinion of the Public Access Counselor 05-FC-40.*

CONCLUSION

For the foregoing reasons, it is my opinion that the DOC did not violate the APRA.

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Rich Larsen